IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3928 OF 2005

Nirmaladevi Dube & ors .. Petitioners

versus

Dhirtajlal Jivraj Nathwani & anr.. Respondents

Ms.Neel Helekar i.b Ms.A.M.Helekar for Petitioners

Mr.Manoj Kumar Upadhyay for Respondent no.1

CORAM : D.G.KARNIK, J

DATED : 27th January, 2006

P.C.

1. Heard learned counsel for the parties.

2. In the suit bearing Suit No.4795 of 2004 filed by the respondent no. 1 an application bearing Chamber Summons bearing No.355 of 2005 was taken out by the petitioner nos. 1 to 3 for joining them as parties to the suit. Though a vakalatnama was signed by all the petitioners, the affidavit in support of the Chamber Summons was filed only by the petitioner no. 2. The learned trial Judge therefore allowed the Chamber Summons qua the petitioner no. 2 and directed that the petitioner

no.2 should be added as a party to the suit. So far as petitioner nos. 1 and 3 were concerned, the learned Judge did not consider whether they were necessary parties to the suit as they had not filed the affidavit in support of the Chamber Summons.

3. In view of the alleged technical defect of not filing an affidavit in support of the Chamber Summons the petitioner nos. 1 and 3 seek leave to withdraw the original Chamber Summons qua them with liberty to make a fresh application for joining them as parties with proper averments and proper affidavit in support. Learned counsel for the respondents has no objection for permitting withdrawal of the Chamber Summons qua the petitioner nos. 1 and 3 who states that if a fresh Chamber Summons is taken out by the petitioner nos. 1 and 3 it may be heard and considered on its own merits on the basis of the averments made therein and affidavit in support.

4. In this view of the matter, following order is passed:

> " Petitioner nos. 1 and 3 are permitted to withdraw Chamber Summons No.355 of 2005 in Suit No.4795 of 2004 pending in the City Civil Court, Mumbai qua them. The petitioner nos.1 and 3 are granted

liberty to make a fresh application for joining them as parties to the suit. Needless to say that the present respondents would have a right to oppose the said application Summons on grounds that are available to them under the law. If such a Chamber Summons is taken out by the petitioner nos. 1 and 3 in future the same should be considered by the trial Court on its own merits. The order joining the petitioner no. 2 as a party to the suit is maintained.

Authenticated copy is allowed.

(D.G. KARNIK, J)